IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

Dr.Anwar Rasheed Vs. United India Insurance Company & ors.

S.B.CIVIL MISC. APPEAL NO.47/1994

Against the award dated 20.07.1993 made by the Motor Accidents Claims Tribunal, Bali in Claim Case No. 31/1991.

Date of Judgment : 25.07.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Kailash Trivedi for the appellants
Mr.R.K.Mehta for the respondent No.1.

BY THE COURT:

This appeal under Section 173 of the Motor Vehicles Act, 1988 has been submitted by the owner of a motorcycle bearing registration No. RPA 4481 seeking enhancement over the amount of compensation of Rs.5400/- awarded by the Tribunal for property damage suffered by him on account of collision of his motorcycle with the bus of respondent No.3 bearing registration No. RNM 2713.

The appellant-claimant made the claim for compensation with the submissions that on 05.02.1991 he was going with one Chhogalal to Falna from his well via Jadri on

his motorcycle and was driving the motorcycle at Harish Chandra Circle in its side when the non-applicant No.2 brought driving the bus aforesaid and hit the motorcycle causing accident. The claimant stated the particulars of the expenditure incurred by him on repairing of the motorcycle in the sum of Rs.10,715.93 and having spent Rs.1,000/- for sending a person from Sumerpur to Pali and while making claim for such expenditure, further demanded compensation of Rs.2000/- for his having not been able to use the motorcycle for two months. The owner and driver of the bus contested the claim, inter alia, with the submissions that the motorcycle was driven rashly and negligently by Shri Bashir Ahmed (father of the claimant) that caused the accident and otherwise the bus being insured with non-applicant No.1 the liability, if any, remains with the insurer. Another objection was raised that Bashir Ahmed and insurer of the motorcycle were not impleaded parties. The non-applicant No.1, insurer of the bus did not submit any reply.

After framing of necessary issues and taking evidence, learned Judge of the Tribunal came to the conclusion that the accident was caused at a Circle for negligence of both the bus driver and the motorcyclist but put the negligence of motorcyclist at 40%. Learned Judge also found that though in the claim application it was suggested that the motorcycle was

driven by the applicant himself but the evidence was led to the effect that the motorcycle was being driven by Bashir Ahmed, father of the applicant. However, learned Judge considered it appropriate to give a benefit of inadvertent mistake to the applicant but observed that the claim application was submitted without verification of all the facts. On the question of quantum of compensation, learned Judge found that an authorised surveyor of the United India Insurance Company has assessed the loss at Rs.5417/- (Ex.26) and the applicant had admitted such assessment correct. Learned Judge referred to the evidence on record including bills of purchase of spare parts and payment to the mechanic and found that purchase bills of the parts were nearly equal to the surveyor's report and providing for depreciation of parts, learned Judge formed the opinion that the applicant has suffered loss at Rs.5417/- as assessed by the Surveyor and has spent Rs.298/- towards assessment fees and may be allowed further Rs.800/- towards transportation and general damages. In that manner, learned Judge assessed the figure of loss at Rs.6500/- and then observed that 40% mistake has been found with the motorcyclist which could even be higher and, therefore, this amount of Rs.6500/- was liable to be reduced in that proportion; but then, abruptly came to conclusion that Rs.5400/- be awarded as compensation to the applicant. The

Tribunal, therefore, made the award in the sum of Rs.5400/- and also allowed interest at the rate of 12% per annum. The claimant has submitted in this appeal that total damages claimed ought to have been allowed and the Tribunal has been in error in taking contributory negligence of the motorcyclist.

Having heard learned counsel for the parties and having perused the record, this Court is clearly of opinion that this appeal remains bereft of substance and what to say of enhancement, the award as made in the present case remains on much higher side.

The claimant has submitted the claim application fundamentally with false averments in paragraph 17 that the motorcycle was driven by him and he was going with Chhogalal. The entire evidence on record has been produced to the effect that Bashir Ahmed drove the vehicle. Learned Judge of the Tribunal yet has taken a liberal view of the matter and has considered such fundamentally incorrect averments in the claim application to be of inadvertent error. Learned Judge has considered the evidence on record and has found that the accident occurred at the circle where both the drivers had plain view available to spot each other from the distance of about 200 feet and when the motorcyclist was taking a turn. Having examined the evidence on record and the statement of AW-1

Bashir Ahmed, this Court is clearly of opinion that the learned Judge has not committed any error in putting the contributory negligence with the motorcyclist at 40%.

So far assessment of loss is concerned, it is borne out from the document Ex.26 and the statement of applicant, AW-2 that he got the vehicle surveyed by an authorised surveyor of the United India Insurance Company who had been his motorcycle's insurer earlier; and the loss has been assessed by the Surveyor at Rs.5417/- and it has been stated in the survey report that the same was admitted correct by the motorcycle owner. The appellant has admitted in his statement that motorcycle was not insured at the time of accident but was earlier insured with the United India Insurance Company and he got it surveyed for the purpose of lodging a claim with the insurer. There remains yet another folly on the part of the claimant that motorcycle was permitted to be taken on the road without having insurance coverage. Be that as it may, in any case, the learned Judge of the Tribunal cannot be said to be in error in accepting the figure of Rs.5417/- as given out in the said surveyor report towards loss.

The learned Judge has calculated an amount of Rs.6500/- to be the total loss suffered by the claimant and then observed that 40% was required to be deducted for the

negligence of motorcyclist but yet has allowed Rs.5400/- as compensation. On a simple arithmetical calculation, the award could not have been made beyond an amount of Rs.3900/- after deducting 40% from Rs.6500/-. The award is obviously stated at an incorrect higher figure of Rs.5400/-. The claimant has further been allowed interest at the rate of 12% per annum. The claim for enhancement on such a liberal award cannot be countenanced and deserves to be rejected.

As a result of the aforesaid, this appeal fails and is dismissed, however, without any order as to costs.

(DINESH MAHESHWARI),J.

MK